

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 2, 2008 appellant, then a 61-year-old nurse consultant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a cerebrovascular accident on June 26, 2008 due to a workplace stress. She also claimed that, while hospitalized on July 6, 2008, she sustained congestive heart failure when she learned that the employing establishment provided her husband a traumatic injury claim form and not one for occupational disease. Appellant asserted that Supervisors Barbara Clarey, Patricia Maravola and James Whitton engaged in a pattern of racial discrimination,² hostility, harassment and unfair disciplinary actions and stole parts of her occupational health records. She alleged that Mar Mayes, a coworker, spit at her on May 21, 2008 but was not disciplined because Ms. Mayes was Caucasian. Appellant contended that during a meeting on June 25, 2008, Ms. Clarey and Mr. Whitton told her to “[g]et out we do not need you any more” because her past uncooperativeness necessitated creating cumbersome communication policies. On June 26, 2008 Ms. Clarey asked appellant to correct a claim although she believed that the supervisors mismanaged the case. Appellant experienced left-sided hemiparesis and was taken to the emergency room.

In an August 6, 2008 letter, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. It requested that she submit a detailed description of all work incidents alleged to have caused or contributed to the claimed conditions. The Office emphasized the importance of submitting a report from an attending physician explaining how and why the identified work factors caused the claimed stroke and congestive heart failure.

In an August 19, 2008 letter, the employing establishment controverted the claim and submitted supervisory statements. Ms. Maravola provided May 27 and July 28, 2008 letters noting that on May 21, 2008 appellant accused Ms. Mayes of spitting on her. As appellant refused to provide a written statement, she could not take further action. Ms. Maravola explained that each of appellant’s suspensions was warranted by her failure to follow direct orders or for unprofessional conduct. She provided April 23, 2004 and August 2 and 4, 2005 disciplinary letters advising appellant that she was “out of control.” Ms. Maravola also submitted complaint letters regarding conduct that resulted in disciplinary action: an April 30, 2001 letter from a hospital official alleging that appellant became abusive when staff refused her demands for confidential patient information; an October 6, 2003 customer letter alleging that she was rude and unprofessional on the telephone; a March 23, 2004 contractor letter noting that appellant criticized how her supervisors managed claims; an August 3, 2005 letter from a clinical manager alleging that she accused contractors and coworkers of trying to get her fired; and an April 13, 2007 letter from a commander alleging that appellant was rude to him on the telephone.

Ms. Clarey explained in June 25 and September 8, 2008 statements that she met with appellant and Mr. Whitton on June 25, 2008 because appellant entered improper remarks against her coworkers in a patient’s file. She provided a printout of the entry, in which appellant accused two coworkers of altering a code she had entered, then reporting her to a supervisor.

² Appellant herself identified as Filipino-American.

Mr. Whitton provided July 2 and August 15, 2008 letters asserting that, at the June 25, 2008 meeting, appellant constantly interrupted him and alleged a management conspiracy against her. He noted that Ms. Clarey dealt calmly with appellant's repeated outbursts.

In a May 23, 2008 letter, Ms. Mayes stated that on May 21, 2008 appellant yelled at her to "shut up" and "sit down" then accused coworkers of conspiring against her.

Appellant submitted medical evidence. In a July 2, 2008 report, Dr. Shilpa Bamrolia, an attending Board-certified internist, noted a June 26, 2008 cerebrovascular accident with symptom onset while at work. Appellant had a history of hypertension and diabetes mellitus.

By decision dated October 7, 2008, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that she failed to establish her allegations of a hostile work environment, harassment and discrimination as factual. The Office further found that appellant did not establish that an employee spit at her on May 21, 2008 or that the supervisors stole her health records. It further found that the June 25, 2008 meeting was an administrative matter and that no error or abuse was shown.

In an October 27, 2008 letter, appellant requested reconsideration. She submitted additional medical evidence. Dr. Z. Mark Hongs, an attending physiatrist, noted in July 11 and 23, 2008 reports that appellant experienced neurologic symptoms after an argument at work on June 25, 2008, then developed congestive heart failure while hospitalized on July 7, 2008 when she became upset. In a March 10, 2009 report, Dr. Miloslava M. Kyncl, an attending Board-certified internist, opined that her stressful and argumentative environment at work contributed to appellant's stroke and congestive heart failure. Dr. Benjamin Lumicao, an attending Board-certified cardiologist, opined on March 20, 2009 that appellant's stroke was precipitated by an "emotional outburst in her office."

In a June 24, 2009 letter, Mr. Whitton stated that Ms. Clarey remained calm at the June 25, 2008 meeting and said nothing to provoke appellant; however, she became agitated and accused her supervisors of conspiring against her. He noted that appellant had been moved between sections as she could not interact professionally with customers or coworkers. Mr. Whitton submitted a December 3, 2003 customer complaint letter describing her rude, threatening behavior at work.

In a July 17, 2009 letter, appellant alleged that her supervisors' statements were gossip and hearsay.

By decision dated July 31, 2009, the Office denied modification, finding that appellant failed to establish any compensable factor of employment. It further found that she had not established any error or abuse regarding the administrative matters of case management methods, the June 25, 2008 meeting and disciplinary suspensions. The Office found that appellant failed to establish any compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an

illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.³ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

Appellant claimed that she sustained a cerebrovascular accident due to stress from four disciplinary suspensions, a June 25, 2008 job discussion and dissatisfaction with her supervisor's coding instructions on June 26, 2008. She also claimed that she sustained congestive heart failure on July 2, 2008 because the employing establishment gave her husband the wrong claim form. The Office found these incidents were noncompensable as they were administrative matters that did not occur in the performance of duty. The Board must review whether these alleged incidents and conditions are covered employment factors under the terms of the Act.

Appellant attributed her condition, in part, to a June 25, 2008 meeting at which her supervisors allegedly yelled at her to "get out." Supervisors Clarey and Whitton explained that the meeting was a job performance discussion regarding an improper entry appellant made in a patient's file. The Board has characterized supervisory discussions of job performance as administrative or personnel matters of the employing establishment, which are covered only when a showing of error or abuse is made.⁷ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ See *Norma L. Blank*, 43 ECAB 384 (1992).

⁶ *Id.*

⁷ *Roger W. Robinson*, 54 ECAB 846 (2003).

reasonably.⁸ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.⁹ In this case, appellant did not submit any witness statements corroborating her version of events. Supervisors Clarey and Whitton submitted several statements asserting that they remained calm during the meeting but appellant became confrontational. These accounts tend to disprove appellant's version of events. As appellant did not establish any administrative error or abuse regarding the June 25, 2008 job discussion, she did not establish a compensable factor of employment in this respect.

Appellant also claimed that her condition was due to her frustration with the way Ms. Clarey processed a claim on June 26, 2008. However, an employee's dissatisfaction with the way a supervisor performs duties or exercises discretion in assigning work is not compensable absent error or abuse.¹⁰ Appellant did not submit evidence of error or abuse by Ms. Clarey in processing the claim. Therefore, she has not established a compensable employment factor in this regard.

Appellant also attributed her condition, in part, to being suspended four times for misconduct, although one suspension was later rescinded. The Board has held that disciplinary actions relate to administrative or personnel matters of the employing establishment, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act unless error or abuse is shown.¹¹ Also, rescission of a disciplinary action by itself does not establish error or abuse.¹² In this case, appellant's supervisors submitted numerous complaint letters from customers and contractors attesting to her unprofessional behavior from 2001 to 2007. Ms. Maravola asserted that appellant's conduct warranted the suspensions given. The Board has reviewed this evidence and finds that appellant's supervisors acted reasonably in issuing the suspensions. Appellant has not established any error or abuse regarding these disciplinary matters. Therefore, she has not established a compensable factor in this regard.

Appellant also contended that she sustained congestive heart failure due to stress because the employing establishment gave her husband a traumatic injury claim Form CA-1 instead of an occupational disease Form CA-2. Although handling of a compensation claim is generally related to the employment, it is an administrative function of the employing establishment and not a duty of the employee and not compensable absent evidence of error or abuse.¹³ In this case, the employing establishment was attempting to assist appellant by giving her husband a claim form while she remained hospitalized. Also, it was not yet clear if appellant asserted a traumatic injury or an occupational disease. Therefore, it was reasonable for the employing establishment to select one of the two forms. There was no error or abuse demonstrated.

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

¹⁰ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

¹¹ *Robert Breeden*, 57 ECAB 622 (2006).

¹² *Paul L. Stewart*, 54 ECAB 824 (2003); *Mary L. Brooks*, 46 ECAB 266, 274 (1994).

¹³ *David C. Lindsey*, 56 ECAB 263 (2005).

Appellant also alleged a series of incidents that the Office found were not established as factual. She alleged that on May 21, 2008 a coworker spit at her. Ms. Mayes submitted a May 27, 2008 letter detailing appellant's May 21, 2008 outburst but did not mention spitting. This statement tends to refute appellant's account of events. Similarly, appellant contended that the employing establishment stole her medical records. However, she submitted no evidence corroborating this accusation. The Board has held that mere allegations, in the absence of factual corroboration, are insufficient to meet a claimant's burden of proof.¹⁴ Thus, appellant has failed to establish these allegations as factual.

Appellant also attributed her condition to a pattern of harassment and discrimination by her supervisors. Discrimination and harassment by supervisors, if established as occurring and arising from the employee's performance of his or her regular duties, could constitute employment factors.¹⁵ To give rise to a compensable disability under the Act, there must be probative and reliable evidence that the intimidation and harassment did in fact occur.¹⁶ Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁷ In this case, appellant did not submit witness statements or other evidence corroborating any incident of discrimination or harassment by a supervisor. Also, Ms. Maravola explained on August 19, 2008 that she could not take action against Ms. Mayes for allegedly spitting at appellant because she would not submit a requested written statement. This refutes appellant's allegation that Ms. Maravola did not discipline Ms. Mayes because she was Caucasian. Thus, she has not established her allegations of harassment and discrimination as factual.

On appeal, appellant asserts that medical evidence submitted on reconsideration established a causal relationship between workplace stress and her cardiovascular conditions. However, as she has not established any compensable work factors, the Board need not consider the medical evidence of record.¹⁸ Appellant also alleged that her supervisors were hostile to her because she refused to agree with their violations of regulations and policies. As stated, she did not establish any incidents of hostility or harassment by her supervisors. Appellant did not establish any compensable employment factor. Therefore, the Office properly denied her claim. Appellant also contended that the Office violated the U.S. Constitution by accepting the testimony of single witnesses. However, the Board does not have jurisdiction to review constitutional issues.¹⁹

¹⁴ *Bonnie Goodman*, 50 ECAB 139 (1998).

¹⁵ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁶ *Marlon Vera*, 54 ECAB834 (2003).

¹⁷ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹⁹ *See Vittorio Pittelli*, 49 ECAB 181 (1997) (finding that as an administrative body the Board does not have jurisdiction to review a constitutional claim).

CONCLUSION

The Board finds that appellant has not established that she sustained a stress-related cerebrovascular accident and congestive heart failure in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 31, 2009 is affirmed.

Issued: April 25, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board